



# City Council Staff Report

**DATE:** November 7, 2018

**AGENDA ITEM NO:** Old Business  
Agenda Item 5-A.

**TO:** The Honorable Mayor and City Council

**FROM:** Ron Bow, City Manager

**SUBJECT:** Adopt a Resolution Pursuant to Elections Code §10010(E)(3)(A)  
Stating the City Council's Intent to Initiate Procedures for Establishing  
and Implementing District Based Elections for City Council Members

**RECOMMENDATION:**

It is recommended that the City Council

- (1) Adopting a resolution establishing a schedule for possible transition to a district based election system; and
- (2) Take such additional, related, action that may be desirable.

**EXECUTIVE SUMMARY:**

This item was continued from the October 17, 2018 City Council meeting. See Attachment 1 for the completed agenda packet from the October 17<sup>th</sup> meeting.

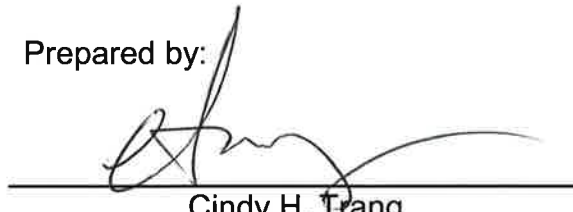
**FISCAL IMPACT:**

None.

Respectfully submitted,

  
\_\_\_\_\_  
Ron Bow  
City Manager

Prepared by:

  
\_\_\_\_\_  
Cindy H. Trang  
Deputy City Clerk

**Attachments:**

1. October 17, 2018 City Council Meeting Staff Report

## **ATTACHMENT 1**

October 17, 2018 City Council Meeting Staff Report



## City Council Staff Report

**DATE:** October 17, 2018

**AGENDA ITEM NO:** New Business  
Agenda Item 6-B.

**TO:** The Honorable Mayor and City Council  
**FROM:** Ron Bow, City Manager  
**SUBJECT:** Adopt a Resolution Pursuant to Elections Code §10010(E)(3)(A) Stating the City Council's Intent to Initiate Procedures for Establishing and Implementing District Based Elections for City Council Members

### **RECOMMENDATION:**

It is recommended that the City Council consider:

1. Adopting a resolution establishing a schedule for possible transition to a district based election system; and
2. Taking such additional, related action that may be desirable.

### **EXECUTIVE SUMMARY:**

In 2013 and earlier in 2018, the City Council considered whether to transition from an at large election system to a district based system. The staff reports from those meetings are attached for reference.

### **BACKGROUND:**

On October 3, 2018, the City Council directed that a resolution be placed on the agenda for consideration and possible action to establish a schedule for transitioning to a district based election system. A draft resolution with a proposed schedule is included for consideration.

During this process, there will be several different opportunities for public input on proposed district boundaries. At the end of the process, the City Council can select an appropriate district map to either approve on its own authority or place on a ballot for voter consideration.

### **FISCAL IMPACT:**

The City contracted with National Demographics Corporation to prepare district maps for a total to not exceed \$50,000. There will be additional costs associated with the transition process. If the City Council chooses to place the matter on a ballot, it may cost approximately and additional \$200,000.

Respectfully submitted by:

  
\_\_\_\_\_  
Ron Bow  
City Manager

Prepared by:

  
\_\_\_\_\_  
Bonnie Tam  
Principal Management Analyst

Approved by:

  
\_\_\_\_\_  
Ron Bow  
City Manager

**ATTACHMENT:**

1. 2013 and 2018 Staff Reports
2. Proposed Resolution

**ATTACHMENT 1**  
**2013 and 2018 City Council Staff Reports**

# STAFF REPORT

City of Monterey Park

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DATE: December 15, 2013

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Mark D. Hensley, City Attorney  
Karl H. Berger, Assistant City Attorney

**SUBJECT:** District Voting

## **BACKGROUND:**

Earlier this year, the City Council asked that the City Attorney's office research the question of how the City might implement district voting to elect persons to the City Council. The City currently utilizes "at large" voting to elect City Councilmembers.

## **DISCUSSION:**

The "default" method for electing city councilmembers in general law cities is known as "at large" voting. This means that all registered voters within the City's jurisdiction may vote for city council candidates regardless of where within the City the voter resides (or where the city council candidate resides).

A general law city may change this default methodology with voter approval. Government Code §§ 34870, *et seq.* provide the means by which a general law city may change its voting practices. The question posed by the City Council earlier this year concerned "district" voting.

Cities may generally chose to establish five, seven or nine districts within their jurisdictions.<sup>1</sup> The ballot initiative creating district voting must identify the district boundary lines and assign numbers to each district.

There are two kinds of district voting that are available for general law cities in California: persons may be elected either "by district" or "from districts." Elections "by district" means that a person may only be elected by voters from the district in which the candidate resides.

This is different from when candidates "from" a district are elected. In this type of voting, a candidate must reside in a particular district, but voters from the city's entire jurisdiction may vote for that candidate.

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<sup>1</sup> When a city opts to have a mayor elected by voters (rather than by the city council), then a city may opt for four, six or eight districts.

Several practical and legal complications can arise from determining whether to move forward with district voting. First, a city must identify the districts and their boundaries. Courts have actively intervened in the drawing of district boundaries on a federal and state level to ensure that there is substantial equality among all voters. Generally, this means that every district must have the same population; race cannot be the predominant factor in creating districts, but may be one consideration in addition to other neutral principles such as compactness, contiguity, and respect for communities with shared interests. If established, districts must be reexamined and potentially adjusted after each census in a process known as reapportionment. This helps preserve substantial equality amongst the voters.

Second, the practical means by which a city may transition from at large voting to district voting is not clearly set forth in California law. Government Code § 34878 provides that (unless the ballot measure provides otherwise) if a ballot measure authorizes district voting for future elections, when the terms of incumbent city councilmembers expires, city councilmembers must then be elected from the districts approved by voters. The practical problem arising from this guidance is that Councilmembers in Monterey Park serve overlapping terms of office, i.e., unless the ballot measure provides a different means of converting to a district election, there will always be incumbent city councilmembers who were elected at large; the conversion to district elections cannot take place.

To overcome this problem, several cities<sup>2</sup> proposed ballot measures which gradually converted at large elections into district elections through attrition, i.e., as councilmembers' terms ended, elections to fill those council seats were subject to district elections. Thus, for example, if district elections were approved in 2014 by Monterey Park voters, then the three council seats up for election in 2015 would be determined by district voting; the other two council seats would be determined by district voting in 2017. Another city opted to seek voter approval for both district voting and to seat councilmembers based upon such districts at the same election.<sup>3</sup>

Finally, there are the questions of (a) how to determine the district boundaries, e.g., by hiring consultants, creating a citizen committee, or through City Council consensus?; (b) whether to place a ballot measure on a special or regular election?; and (c) how to pay for the preparation of the ballot measure and the election? These are, obviously, policy questions that would need to be determined by the City Council. This staff report simply identifies such matters as areas that should be considered.

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<sup>2</sup> The cities of Chula Vista, Modesto, Anaheim, and Madera.

<sup>3</sup> The city of Escondido.

**FISCAL IMPACT:**

It is unclear how much it would cost to create districts, draft a ballot measure, and conduct an election. The overall costs would largely be dependent upon how the City Council decided the issues identified above.

**RECOMMENDATION:**

The City Council should (a) determine whether it would like to move forward with drafting the documents needed for voters to consider district voting; (b) if so, determine what method the City should utilize to create districts, i.e., hire a consultant or complete it "in house"; (c) determine what kind of district voting would be appropriate, i.e., should the ballot measure be "by district" or "from district"; (d) determine how many districts should be created; (e) determine how the ballot measure would, if approved, transition "at large" voting to district voting; and (f) take such additional related action that may be desirable.

By: 

Karl H. Berger  
Assistant City Attorney

Attachments: Government Code §§ 34870, *et seq.*



**§ 34870. Application, CA GOVT § 34870**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34870**

**§ 34870. Application**

Currentness

This article applies only to cities.

**Credits**

(Added by Stats.1970, c. 278, p. 549, § 2.)

West's Ann. Cal. Gov. Code § 34870, CA GOVT § 34870

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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**§ 34871. Submission to electors of election ordinance;..., CA GOVT § 34871**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34871**

**§ 34871. Submission to electors of election ordinance; definitions; initiative**

Currentness

At any municipal election, or special election held for that purpose, the legislative body may submit to the registered voters an ordinance providing for the election of members of the legislative body in any of the following ways:

- (a) By districts in five, seven, or nine districts.
- (b) From districts in five, seven, or nine districts.
- (c) By districts in four, six, or eight districts, with an elective mayor pursuant to Article 5 (commencing with Section 34900).
- (d) From districts in four, six, or eight districts, with an elective mayor pursuant to Article 5 (commencing with Section 34900).

The term "by districts" as used in this article shall mean election of members of the legislative body by voters of the district alone. The term "from districts" shall mean election of members of the legislative body who are residents of the district from which they are elected by the voters of the entire city. "Geographical area making up the district" shall in the case of elections by district mean the district, and in the case of elections from districts shall mean the entire city except with respect to the residence requirements imposed by Section 34882.

That ordinance may also be qualified for the ballot by means of an initiative measure in accordance with Chapter 3 (commencing with Section 9200) of Division 9 of the Elections Code.

**Credits**

(Added by Stats.1970, c. 278, p. 549, § 2. Amended by Stats.1975, c. 652, p. 1412, § 1; Stats.1976, c. 223, p. 421, § 1; Stats.1978, c. 745, p. 2340, § 1; Stats.1994, c. 923 (S.B.1546), § 68.)

West's Ann. Cal. Gov. Code § 34871, CA GOVT § 34871

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**§ 34872. Requisites of ordinance, CA GOVT § 34872**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34872

§ 34872. Requisites of ordinance

Currentness

The ordinance shall state the number of legislative districts, describe the boundaries of each, number them, and state whether members of the legislative body shall be elected by districts or from districts, or by or from districts except for an elective mayor.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1412, § 2; Stats.1976, c. 223, p. 421, § 2.)

West's Ann. Cal. Gov. Code § 34872, CA GOVT § 34872

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**§ 34873. Amendment or repeal of ordinance, CA GOVT § 34873**

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Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34873

**§ 34873. Amendment or repeal of ordinance**

Effective: January 1, 2011

Currentness

An ordinance enacted pursuant to this article may be amended or repealed in the same manner; provided, the term of office of any council member elected shall not be affected.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2010, c. 38 (A.B.1668), § 3; Stats.2010, c. 699 (S.B.894), § 7.)

West's Ann. Cal. Gov. Code § 34873, CA GOVT § 34873

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**§ 34874. Amendatory ordinance; submission to planning..., CA GOVT § 34874**

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Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34874**

**§ 34874. Amendatory ordinance; submission to planning commission or legislative body**

**Currentness**

No amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1978, c. 745, p. 2340, § 2.)

West's Ann. Cal. Gov. Code § 34874, CA GOVT § 34874

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**§ 34875. Amendatory ordinance; submission to voters, CA GOVT § 34875**

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Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34875**

**§ 34875. Amendatory ordinance; submission to voters**

**Effective: January 1, 2011**

Currentness

The amendatory ordinance shall not be submitted to the voters if (a) one or more of the legislative districts do not close, (b) one or more entire legislative districts are eliminated prior to the termination of the term of office of the council member of or from the district, (c) the effect is that a greater number of council members will be qualified to hold office concurrently than are authorized by this article or the amendatory ordinance.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2010, c. 38 (A.B.1668), § 4; Stats.2010, c. 699 (S.B.894), § 8.)

Notes of Decisions (2)

**West's Ann. Cal. Gov. Code § 34875, CA GOVT § 34875**

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**§ 34876. Findings of planning commission or legislative body, CA GOVT § 34876**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34876

**§ 34876. Findings of planning commission or legislative body**

Currentness

The planning commission of the city or, in absence of such body, the legislative body of the city shall make findings as to the matters set forth in Section 34875 by resolution within 90 days after submission of the amendatory ordinance to the city clerk. Failure to make findings shall be constituted as a finding of compliance with Section 34875.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2.)

West's Ann. Cal. Gov. Code § 34876, CA GOVT § 34876

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**§ 34877. Form of ballots, CA GOVT § 34877**

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Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34877

**§ 34877. Form of ballots**

Currentness

The proposition of establishing or altering legislative districts shall be printed on the ballots substantially as follows:

"Shall members of the legislative body of the City of \_\_\_\_\_ be elected by (or from) districts described in Ordinance No. \_\_\_\_\_?"

or, if applicable:

"Shall members of the legislative body of the City of \_\_\_\_\_ be elected by (or from) districts described in Ordinance No. \_\_\_\_\_, and the Mayor of the City of \_\_\_\_\_ be elected on a citywide basis by the voters of the entire city?"

followed by the words "Yes" and "No," so printed that the voters may express their choice.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1413, § 3.)

West's Ann. Cal. Gov. Code § 34877, CA GOVT § 34877

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**§ 34878. Effect of favorable vote on ordinance, CA GOVT § 34878**

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West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34878**

**§ 34878. Effect of favorable vote on ordinance**

Currentness

If a majority of the registered voters of the city, who vote, vote in favor of the ordinance, at the expiration of the terms of office of the members of the legislative body, or as provided by ordinance, members of the legislative body shall be elected by (or from) the districts described, or by or from districts with an elective mayor, and in the manner provided.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1413, § 4; Stats.1978, c. 745, p. 2340, § 3.)

Notes of Decisions (1)

West's Ann. Cal. Gov. Code § 34878, CA GOVT § 34878

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**§ 34879. Term of office, CA GOVT § 34879**

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West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34879**

**§ 34879. Term of office**

Currentness

The term of office of members of the legislative body elected pursuant to the provisions of this article shall be four years, unless otherwise expressly provided.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2.)

West's Ann. Cal. Gov. Code § 34879, CA GOVT § 34879

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**§ 34880. Inclusion of election provisions in petition for..., CA GOVT § 34880**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34880**

**§ 34880. Inclusion of election provisions in petition for incorporation; term of office**

Effective: January 1, 2001

Currentness

(a) If the petition or proposal developed by the commission for submission to the electorate for incorporation or special reorganization of a city provides for the election of members of the legislative body by (or from) districts and includes substantially the provisions required to be included in an ordinance providing for that election, including Section 34871, the members of the legislative body shall be elected in the manner provided in the petition or proposal.

(b) The members of the legislative body shall hold office until the next general municipal election. At the next general municipal election the members elected by or from the even-numbered districts shall hold office for four years and the members elected by or from the odd-numbered districts shall hold office for two years. Thereafter the term of office is four years.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2000, c. 761 (A.B.2838), § 3.)

West's Ann. Cal. Gov. Code § 34880, CA GOVT § 34880

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**§ 34881. Election of one member from each district and of..., CA GOVT § 34881**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34881**

**§ 34881. Election of one member from each district and of mayor on citywide basis; effect on city officers**

Currentness

One member of the legislative body shall be elected by or from each district, or, if applicable, one member of the legislative body shall be elected by or from each district constituting a geographical division of the city, and the mayor shall be elected on a citywide basis. With the possible exception as to the number of members of the legislative body, the officers of the city remain the same.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1975, c. 652, p. 1413, § 5.)

**West's Ann. Cal. Gov. Code § 34881, CA GOVT § 34881**

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**§ 34882. Eligibility for office, CA GOVT § 34882**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34882**

**§ 34882. Eligibility for office**

Currentness

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1975, c. 1030, p. 2432, § 2, eff. Sept. 24, 1975; Stats.1994, c. 923 (S.B.1546), § 69.)

Notes of Decisions (2)

West's Ann. Cal. Gov. Code § 34882, CA GOVT § 34882

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**§ 34883. Voters' qualifications; nominating petitions; residency, CA GOVT § 34883**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34883

**§ 34883. Voters' qualifications; nominating petitions; residency**

Currentness

Registered voters signing nomination petitions or voting for a member of the legislative body shall be residents of the geographical area making up the district from which the member is to be elected.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1978, c. 745, p. 2341, § 4.)

West's Ann. Cal. Gov. Code § 34883, CA GOVT § 34883

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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**§ 34884. Election by district; establishment of districts; terms of office, CA GOVT § 34884**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34884**

**§ 34884. Election by district; establishment of districts; terms of office**

Currentness

If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 35258<sup>1</sup>, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, the following procedure shall apply:

(a) Prior to the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the councilmanic districts. The districts shall be as nearly equal in population as may be. In establishing the boundaries of the districts, the legislative body may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interests of the districts;

(b) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years; and

(c) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be elected by district in the odd-numbered districts and shall hold office for four years.

The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters at any future election of a measure in accordance with the provisions of Section 34871.

**Credits**

(Added by Stats.1978, c. 745, p. 2341, § 4.5.)

**Footnotes**

1

Repealed.

**§ 34884. Election by district; establishment of districts; terms of office, CA GOVT § 34884**

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West's Ann. Cal. Gov. Code § 34884, CA GOVT § 34884

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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End of Document

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## City Council Staff Report

**DATE:** March 7, 2018

**AGENDA ITEM NO:**

**New Business  
Agenda Item 6-A.**

**TO:** The Honorable Mayor and City Council  
**FROM:** Councilmember Teresa Real Sebastian  
**SUBJECT:** Elections by District

### **RECOMMENDATION:**

It is recommended that the City Council:

1. Receive and file this report;
2. If desirable, authorize the City Manager to execute an agreement, in a form approved by the City Attorney, with a qualified company to compile proposed voting district maps;
3. Direct the City Attorney to prepare a draft ordinance (and related documents) for consideration at a future City Council meeting to amend the Monterey Park Municipal Code ("MPMC") by transitioning from at-large to by-district elections; and
4. Take such additional, related action that may be desirable.

### **EXECUTIVE SUMMARY:**

In December 2013, the City Council considered whether it was in the public interest to transition from the existing "at-large" election system to a "by-district" election. A copy of that staff report is attached for reference.

Since then, the City of South Pasadena, along with many other cities, was forced to implement by-district elections under threat of litigation. Among other things, that City paid out \$30,000 in attorney's fees to an attorney threatening litigation if the City failed to implement by-district elections (see attached press report). This was done notwithstanding the attorney knowing nothing about the voters within South Pasadena. Cities that fight can end up paying millions of dollars, e.g., Palmdale paid \$4.5 million in a settlement where plaintiffs alleged the city's at-large deprived them of their voting rights (see LA Times Article from 2015).

### **BACKGROUND:**

A general overview of district elections is provided in the staff report from 2013. Since that time, a particular attorney has threatened multiple cities in California with litigation. His allegations are that those cities are violating the California Voting Rights Act of 2001 ("CVRA") by failing to have district elections. The argument is that only district elections

will allow proper representations of all ethnic groups. Rather than spend millions of dollars fighting a CVRA case (where the cities would have to pay its own attorneys and the other side's too), those cities have generally switched from an at-large election system to a district voting system.

While Monterey Park has not yet been targeted, it seems prudent for the City to be proactive in avoiding the need to pay undeserved attorney fees. The City's money is better spent on repairing and improving infrastructure or other projects that benefit its residents.

Additionally, United States Census data (see attached) show that Monterey Park residents are primarily of Asian descent. The next largest ethnic group are Latino; the third largest are Caucasian. These populations, however, are not evenly distributed throughout the City. Rather, census data confirm that residents are grouped in various locations (see attached examples).<sup>1</sup> Transitioning from at-large to district elections will help ensure that these voters are appropriately represented in City government.

Our City's districts should be no different from those of other elected representatives on a federal, state and County level: all of these are generally based upon geographic boundaries rather than racial/ethnic concentrations. As some observers note, "since each representative is beholden to a specific geographical area, issues that are important to a particular neighborhood or region are sure to have a champion."<sup>2</sup> This cannot always be accomplished in an at-large election where some candidate can, literally, be next door to one another and thus represent only one neighborhood.

The City Council should take these next steps:

- Select a district mapping expert. An experienced professional is key to creating appropriate district maps for City Council consideration. The recommended action is to authorize the City Manager to select a qualified expert.
- The City Council will determine the number of districts, etc.
- Adopt district voting by City Council ordinance.

#### **FISCAL IMPACT:**

District mapping services are likely to cost \$30,000 to \$50,000 for a qualified consultant. The savings of millions of dollars in litigation costs (the City would need to pay its own attorneys and then, if it lost any litigation, it would need to pay the other side too!) makes that expenditure prudent.

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<sup>1</sup> See, [www.city-data.com/city/Monterey-Park-California.html](http://www.city-data.com/city/Monterey-Park-California.html). Accessed February 27, 2018.

<sup>2</sup> Amy, Douglas J. (2000, 15<sup>th</sup> Ed.). *Behind the ballot box: a citizen's guide to voting systems*. Westport, Conn: Praeger, p.31.

**Attachments:**

1. City of South Pasadena Press Release dated July 14, 2017;
2. Los Angeles Time Article regarding Palmdale dated May 6, 2015;
3. December 18, 2013 Staff Report;
4. U.S. Census data for Monterey Park; and
5. Examples of resident groupings.

## **ATTACHMENT 1**

**City of South Pasadena  
Press Release dated July 14, 2017**



## **CITY OF SOUTH PASADENA**

1414 MISSION STREET, SOUTH PASADENA, CA 91030

TEL: (626) 403-7230 • FAX: (626) 403-7211

WWW.SOUTHPASADENACA.GOV

FOR IMMEDIATE RELEASE

July 14, 2017

Contact: Anthony J. Mejia  
Chief City Clerk  
Phone: (626) 403-7232

### **South Pasadena City Council to Consider District Elections**

At its regular meeting on Wednesday, July 19, 2017, the South Pasadena City Council will consider whether to initiate steps toward a district-based voting system to replace the current at-large voting system for City Council elections.

The City Council is considering taking this action after receipt of a letter on June 5, 2017, containing unsubstantiated allegations that the City's at-large election system violates the California Voting Rights Act (CVRA). The letter was written by Malibu-based attorney Kevin Shenkman, on behalf of his client, Southwest Voter Registration Education Project. The letter alleged that there is evidence of Latino "polarized voting" in the City of South Pasadena electorate. Under the CVRA, any evidence of racially polarized voting is sufficient to require a court to order a change from at-large voting to district-based voting. Racially polarized voting occurs when there is a difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate.

Approximately 20 percent of South Pasadena residents are Latino and unlike other cities where at-large elections have prevented Latinos from electing candidates of their choice, the electoral history for the City Council of the City of South Pasadena demonstrates that Latino candidates have been regularly elected in recent history. Since 2007, Latinos have won 2 of the 3 times they were on the ballot, serving a total of 8 out of 10 years. Today, the South Pasadena City Council is represented by residents from a diverse range of racial and ethnic backgrounds including Asian-American, Latino, Armenian, Italian, and Caucasian.

"It is unfortunate that a Malibu-based attorney with no real knowledge of the South Pasadena electorate can infringe on our electoral system with impunity. The State Legislature has created the conditions in which encourage opportunistic attorneys to threaten litigation. The City Council is left with a very difficult choice – to fight a very expensive legal battle or be forced to transition into district-based elections," Interim City Manager Elaine Aguilar said.

Such a lawsuit would be very costly, whether or not the City was able to successfully defend against it. Even cities that have settled lawsuits brought under the CVRA, including cities that have maintained no violations have occurred, have incurred significant expenses, not only to pay their own attorneys' fees, but to pay the attorneys' fees for the plaintiffs. For example, in February 2015, the City of Santa Barbara reportedly paid \$800,000 in attorneys' fees and expert costs to settle its CVRA lawsuit. The costs are much higher for those cities that have elected to litigate and have not prevailed, as they must bear both their own attorneys' fees as well as those of the plaintiff. For example, the City of Palmdale incurred expenses in excess of \$4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Moreover, what is most concerning is that staff is unaware of any city to date that has prevailed in defending its "at-large" system of election under a claim filed by any individual or group under the CVRA.

In a district-based election system, a candidate must live in the district he or she wishes to represent. The decision whether to establish five voting districts is one of the topics that will be decided upon by the City Council as a result of the minimum of four (4) public hearings that will be held as required by the Elections Code Section 10010 should the City Council adopt a resolution to initiate this process.

One criticism expressed about forcing a district-based election system is that it can actually dilute the voting power of the very minority it seeks to empower, by limiting that group to the selection of one Councilmember within their district once every four years, rather than the opportunity to elect two or three Councilmembers every two years.

"This is a solution looking for a problem that does not exist in South Pasadena. I am concerned that these outside forces coercing our small, diverse City to change to district-based voting will polarize our community and take away our citizens' existing right to elect an entire City Council to represent their interests," stated South Pasadena City Councilmember Diana Mahmud, a Latina elected in 2013 in an at-large election.

Department: Management Services Department

Contact Person: Anthony J. Mejia, Chief City Clerk

Telephone Number: (626) 403-7230

# City of South Pasadena Agenda Report

*Michael A. Cacciotti, Mayor  
Richard D. Schneider, M.D., Mayor Pro Tem  
Robert S. Joe, Councilmember  
Marina Khubesian, M.D., Councilmember  
Dima Makhmud, Councilmember*

*Evelyn G. Zneimer, City Clerk  
Gary E. Piu, City Treasurer*

COUNCIL AGENDA: July 19, 2017

TO: Honorable Mayor and City Council

VIA: Elaine Aguilar, Interim City Manager

FROM: Anthony J. Mejia, Chief City Clerk

SUBJECT: **Consideration of Whether to Transition from an At-Large Electoral System to a District-Based Electoral System for Members of the City Council**

## **Recommendation**

It is recommended that the City Council provide direction as follows:

1. Whether to adopt a resolution entitled "A Resolution of the City Council of the City of South Pasadena, California, declaring its intent to transition from at-large elections for City Council to district-based elections for City Council pursuant to Elections Code Section 10010."

OR

2. Authorize a response letter to plaintiff's counsel, Kevin Shenkman, asserting no violation of the California Voting Rights Act (CVRA).

## **Commission Review and Recommendation**

This matter was not reviewed by a commission.

## **Background**

The City of South Pasadena currently elects its City Councilmembers through an "at-large" electoral system in which each Councilmember can reside anywhere in the South Pasadena and is elected by the voters of the entire electorate to provide citywide representation. All voters are thus insured of the opportunity to elect two or three Councilmembers every two years, resulting in a five-member City Council elected to serve the citywide purposes of the electorate.

On June 5, 2017, the City of South Pasadena (City) received a certified letter from Malibu-based attorney Kevin Shenkman, on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City's at-large electoral system violates the CVRA. Mr. Shenkman alleges evidence of Latino "polarized voting" in the South Pasadena electorate and threatens litigation if the City declines to adopt a district-based electoral system.

A district-based electoral system is one in which a city is physically divided into separate districts, each with one Councilmember who resides in the district and is chosen by the voters residing in that particular district. In a district-based electoral system, voters within each district may only vote for one candidate every four years.

Due to a recent change in the law (Assembly Bill 350, amending Elections Code [EC] Section 10010) discussed in more detail below, the City must determine within 45 days of receipt of the plaintiff's threat letter: 1) whether to adopt a Resolution of Intent to initiate the transition to a district-based electoral system; or 2) assert in a response letter to the plaintiff's attorney that the record does not support a violation of the CVRA in South Pasadena. The deadline is July 20, 2017; accordingly, the City Council must decide this evening whether to adopt the attached Resolution of Intent, or whether to direct the City Attorney to send a letter to Mr. Shenkman to correct his misapprehension of the facts in South Pasadena (Attachment 3). Although the City does not believe that the record shows any Latino racially-polarized voting in South Pasadena in violation of the CVRA, Mr. Shenkman can ignore this and proceed to engage the City in costly litigation in an attempt to force a district-based electoral system, leaving South Pasadena's electoral system in the hands of the Court.

### Analysis

The Federal Voting Rights Act of 1965 (FVRA) requires a successful plaintiff to show that: 1) a minority group be sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district; 2) there is racially-polarized voting; and 3) there is white bloc voting sufficient usually to prevent minority voters from electing candidates of their choice (*Thornburg v. Gingles*, 1986). If (and only if) all three of these "preconditions" are proven, the Court then proceeds to consider whether, under the "totality of circumstances" the votes of minority voters are diluted.

However, the CVRA prescribes an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs can prove a violation *solely* on evidence of racially-polarized voting EC Section 14027. Racially-polarized voting occurs when there is a difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate (EC Section 14026[e]). The CVRA defines a "protected class" broadly as a class of voters who are members of a race, color, or language minority group (EC 14626[d]).

The CVRA appears to eliminate the first precondition that plaintiffs must prove that the minority group is sufficiently large and geographically compact to form a majority in a single member district (EC 14026[c]). The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of circumstances test (EC 14028[e]). The most likely remedy in a successful CVRA action would be to order cities with an at-large electoral system to change to a district-based electoral system in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome.<sup>1</sup> However, where minority race voters are spread relatively evenly throughout a city, as is the case with Latino residents in South Pasadena, a district-based electoral system under the CVRA is equally likely to dilute the vote of a minority race that is unable to account for the majority of voters within any district boundaries. Additionally, voters in each district may only elect one candidate every four years, rather than having the opportunity to elect two or three candidates every two years.

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<sup>1</sup> League of California Cities Analysis regarding the California Voting Rights Act, prepared by Marguerite Mary Leoni and Christopher E. Skinnell, of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP



Mr. Sherkman purports that during the election of 2011, a Latino candidate – Art Salinas – ran for City Council and lost, despite “receiving significant support from Latino voters” and asserts a “complete absence of Latinos to be elected to the City Council in recent history.” Mr. Sherkman **fails** to recognize the successful candidacies of David Sifuentes in 2007 and Diana Mahmud in 2013, both of Latino descent. Mr. Sherkman further alleges the existence of polarized voting and threatens litigation if the City declines to adopt a district-based electoral system. In spite of Mr. Sherkman’s unsubstantiated claims, the CVRA finds that a violation may be established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision, including ballot measures (EC 14028[b]).

Approximately 20 percent of South Pasadena residents are Latino and unlike other cities where at-large elections have prevented minorities from electing candidates of their choice, the electoral history for the City Council of the City of South Pasadena demonstrates that Latino candidates have been regularly elected. Since 2007, Latinos have won two of the three times they were on the ballot. Today, the South Pasadena City Council is represented by residents from a diverse range of racial and ethnic backgrounds including Asian-American, Latino, Armenian, Italian, and Caucasian.

Despite the City’s history of inclusionary voting history, it is unknown whether analyses of other electoral choices by South Pasadena voters would identify the presence of racially-polarized voting. As a result of the lower threshold established by the CVRA, cities and other jurisdictions throughout California have been facing challenges to their at-large electoral systems, with little or no regard to whether a district-based electoral system will actually dilute minority race voting power, rather than empower it. Many of these jurisdictions have voluntarily switched to district-based electoral systems instead of facing litigation. AB 350 amended EC Section 10010 to place a cap of a maximum of \$30,000 on attorney’s fees that a plaintiff would be entitled to recover if the target city, within 45 days of receipt of the plaintiff’s threat letter, voluntarily adopts a Resolution of Intent to consider an ordinance to establish a district-based electoral system, and then actually adopts such an ordinance within 90 days following the date it adopted the Resolution of Intent.

The CVRA contains an attorney’s fees provision that entitles a prevailing plaintiff to an award of its reasonable attorney’s fees and litigation expenses, including expert witness fees. On the other hand, a prevailing defendant is not entitled to recover any costs, unless the Court finds the action to be “frivolous, unreasonable, or without foundation,” an extremely high standard.

Cities that have attempted to defend their existing at-large electoral systems under the CVRA have incurred significant legal costs, including reimbursement of the attorneys’ fees incurred by plaintiffs. Awards in these cases have reportedly ranged from approximately \$400,000 to over \$4,500,000. For example, in February 2015, the City of Santa Barbara reportedly paid \$800,000 in attorney’s fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred an expense in excess of \$4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA.

Staff estimates that the cost to defend a CVRA lawsuit would exceed \$500,000 if successful, and could likely exceed \$2,000,000 if the plaintiff prevailed and the City was ordered to pay the plaintiff's attorney's fees. These fees and costs would be a General Fund liability which would be a significant unanticipated expense.

*Procedures for the Transition to a District-Based Electoral System*

EC Section 10010, as amended by AB 350, provides for a 90-day "safe harbor" period in which prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) Public Hearings over a period of no more than thirty (30) days, at which time the public will be invited to provide input regarding the composition of the districts.
- 2) After the draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
- 4) The first version of a draft map shall be published at least seven (7) days before consideration at a Public Hearing. If a draft map is revised at or following a Public Hearing, it shall be published and made available to the public for at least seven (7) days before being adopted.

A tentative timeline for the consideration and implementation of a district-based electoral system is identified in Exhibit A of Attachment 1. Public input and testimony on the composition of districts and the proposed maps are very important and all South Pasadena residents are encouraged to participate in these Hearings. The maps will be drawn by National Demographics Corporation, a professional demographer with extensive experience in the CVRA and drafting of districts.

If the City Council adopts the ordinance approving a district-based electoral system, the two Council offices up for reelection in November 2018 would be elected from districts (Diana Mahmud and Michael A. Cacciotti). In November 2020, the remaining three Council offices would be elected from districts (Robert S. Joe, Marina Khubesrian M.D., and Richard D. Schneider M.D.). The offices of City Clerk and City Treasurer would remain unaffected and at-large positions.

**Fiscal Impact**

There will be significant staff time needed to transition to a district-based electoral system due to the need to conduct multiple Public Hearings and community workshops, in addition to the cost for a demographics consultant. Should the City Council determine to proceed to adopt the Resolution of Intent this evening, the City will be required to reimburse the plaintiff for its attorney's fees and costs up to \$30,000, but will not be exposed to additional legal fees in defense of a lawsuit brought under the CVRA.

**Legal Review**

The City Attorney has reviewed this item.

**Public Notification of Agenda Item**

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

**Attachments:**

1. Letter from Kevin Shenkman, received on June 5, 2017
2. Draft Resolution of Intent to Transition to District-Based Elections
  - a. Exhibit A – Tentative Timeline for the Consideration and Implementation of a District-Based Electoral System
3. Draft Response Letter to Kevin Shenkman

**ATTACHMENT 1**

Letter from Kevin Shenkman, received on June 5, 2017

ATTACHMENT I

VIA CERTIFIED MAIL

June 2, 2017

Anthony Mejia  
City Clerk  
City of South Pasadena  
1414 Mission St.  
South Pasadena, CA 91030

City of South Pasadena

JUN 05 2017

City Clerk's Division

Re: *Violation of California Voting Rights Act*

I write on behalf of our client, Southwest Voter Registration Education Project. The City of South Pasadena ("South Pasadena") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within South Pasadena is racially polarized, resulting in minority vote dilution, and therefore South Pasadena's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 667 ("Sanchez"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) ("Gingles"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected

officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group’s ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4<sup>th</sup> 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 *is established* if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures,

or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

South Pasadena’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of South Pasadena’s council elections.

The election of 2011 is illustrative. In that election, a Latino candidate – Art Salinas – ran for council and lost. Mr. Salinas received significant support from Latino voters, but fell short of securing a seat in South Pasadena’s at-large election due to the bloc voting of South Pasadena’s majority non-Latino electorate. The near absence of Latino candidates willing to run in South Pasadena’s at-large election system is also indicative of the vote dilution of South Pasadena’s at large election system – the lack of Latino candidates is itself a symptom of that vote dilution. See *Westwego Citizens for Better Gov. v. City of Westwego*, 872 F.2d 1201 (5<sup>th</sup> Cir. 1989).

According to recent data, Latinos comprise approximately 18.6% of the population of South Pasadena. The contrast between the significant Latino proportion of the electorate and the complete absence of Latinos to be elected to the City Council in recent history is telling.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

Given the historical lack of Latino representation on the city council in the context of racially polarized elections, we urge South Pasadena to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than July 21, 2017 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman



**ATTACHMENT 2**  
**Draft Resolution of Intent**

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS FOR CITY COUNCIL TO DISTRICT-BASED ELECTIONS FOR CITY COUNCIL PURSUANT TO ELECTIONS CODE SECTION 10010**

**WHEREAS**, members of the City Council of the City of South Pasadena (City) are currently elected in "at-large" elections, in which each City Councilmember is elected by the registered voters of the entire City; and

**WHEREAS**, Government Code Section 34886 in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an "at-large" system to a "by-district" system in which each Councilmember is elected only by the voters in the district in which the Councilmember resides; and

**WHEREAS**, the City received a certified letter on June 5, 2017, from Kevin I. Shenkman, Esq., on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City's at-large electoral system violates the California Voting Rights Act (CVRA) and threatening litigation if the City declined to adopt a district-based electoral system; and

**WHEREAS**, the City has a history of inclusionary voting as Latino candidates have been regularly elected to the City Council. Since 2007, Latinos have won two of the three times they were on the ballot, serving a total of 8 out of 10 years. Today, the City Council is represented by residents from a diverse range of racial and ethnic backgrounds including Asian-American, Latino, Armenian, Italian, and Caucasian; and

**WHEREAS**, the City denies that its election system violates the CVRA or any other provision of law and asserts that South Pasadena's electoral system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its City Council elections; and

**WHEREAS**, although the letter was not accompanied by any evidence to support the claim of a CVRA violation, the City Council has concluded that the public interest would be better served by transitioning to a district-based electoral system because: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit would require the City to pay prevailing plaintiff's attorney's fees, and 3) reimbursable costs and attorney's fees are capped at a maximum of \$30,000 by following the procedures set forth in Elections Code Section 10010 as amended by Assembly Bill 350; and

**WHEREAS**, prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, Elections Code Section 10010 requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) Public Hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.
- 2) After all draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
- 4) The first version of a draft map shall be published at least seven (7) days before consideration at a Public Hearing. If a draft map is revised at or following a Public Hearing, it shall be published and made available to the public for at least seven (7) days before being adopted.

**WHEREAS**, the City will be utilizing the services of a professional demographer to assist the City to develop a proposal for a district-based electoral system; and

**WHEREAS**, the adoption of a district-based electoral system will not affect the terms of any sitting Councilmember, each of whom will serve out his or her current term.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based electoral system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for Members of the City Council beginning in November 2018.

**SECTION 2.** The City Council directs the City Clerk and City Attorney to work with a professional demographer, and other appropriate consultants as needed, to provide a detailed analysis of South Pasadena's current demographics and any other information or data necessary to prepare a draft map that divides South Pasadena into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

**SECTION 3.** The City Council hereby approves the tentative timelines as set forth in Exhibit A, attached to and made part of this resolution, for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

**SECTION 4.** The timeline contained in Exhibit A may be adjusted by the City Clerk as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010.

**SECTION 5.** The City Council directs the City Clerk to post information regarding the proposed transition to a district-based electoral system on the City's website, including maps, notices, agendas and other information.

**SECTION 6.** The City Clerk of the City of South Pasadena shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

**PASSED, APPROVED AND ADOPTED ON** this 19<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
Michael A. Cacciotti, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Evelyn G. Zneimer, City Clerk  
(seal)

\_\_\_\_\_  
Teresa L. Highsmith, City Attorney

**I HEREBY CERTIFY** the foregoing resolution was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 19<sup>th</sup> day of July, 2017, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

---

Evelyn G. Zneimer, City Clerk  
(seal)

EXHIBIT A

**TENTATIVE TIMELINE FOR THE  
CONSIDERATION AND IMPLEMENTATION OF A  
DISTRICT-BASED ELECTORAL SYSTEM**

**Day 1**

07/19/2017: City Council Meeting to introduce topic and adoption of the Resolution of Intent to transition from at-large to district-based elections.

CVRA Action cannot be commenced for 90 days (Safe Harbor Period).

**Day 24**

08/12/2017: Public Hearing #1: Saturday Community Workshop to seek community input on “communities of interest” and the composition of districts.

**Day 28**

08/16/2017: Public Hearing #2: City Council Meeting to seek community input and to provide direction on “communities of interest” and the composition of districts.

**Day 45**

09/02/2017: Optional: Saturday Community Workshop to seek community input on the content of the proposed draft district maps and sequence of elections.

**Day 49**

09/06/2017: Public Hearing #3: City Council Meeting to seek community input and to provide direction on the content of the proposed draft maps and sequence of elections.

**Day 63**

09/20/2017: Public Hearing #4: City Council Meeting to select a preferred district map and to introduce an ordinance to transition to district-based elections.

**Day 77**

10/04/2017: City Council Meeting to adopt an ordinance to transition to district-based elections.

**Day 90**

10/17/2017: Safe Harbor Period Ends & CVRA action could be filed.

**ATTACHMENT 3**  
**Draft Response Letter to Kevin Shenkman**

790 E. Colorado Boulevard, Suite 850  
Pasadena, CA 91101-2109  
Voice (213) 542-5700  
Fax (213) 542-5710

**COLANTUONO  
HIGHSMITH  
WHATLEY, PC**

Teresa L. Highsmith  
(213) 542-5703  
THighsmith@chwlaw.us

Our File No. 49063.0009

July 19, 2017

**ATTACHMENT 3**

**VIA CERTIFIED MAIL**

Kevin Shenkman  
28905 Wright Road  
Malibu, CA 90265

Re: City's Response Letter to Allegations of Violation of CVRA

Dear Mr. Shenkman:

Our office represents the City of South Pasadena as its City Attorney. We have been forwarded a copy of your June 2, 2017 letter to Chief City Clerk, Anthony Mejia, for initial response.

The City agrees with you that efforts should always be taken to ensure all voters have an equal voice in selecting the representatives of their choice. Dilution of the minority vote can still occur in a district-based electoral system, particularly where the minority race is spread evenly across a city. If there are an insufficient number of eligible minority race voters to produce an effective minority-majority "block" vote in any district, the result would be the actual *dilution* of the minority race's ability to elect a candidate of their choice. The resulting dilution would be further compounded by the fact that the minority race would only have one chance every four years to elect a candidate of their choice, as opposed to the opportunity to elect two or three candidates of their choice every two years. Such would be the situation in South Pasadena, resulting in real harm to our Latino community by the unintended consequences of an unfounded and incorrect conclusion that racially polarized voting occurs among Latinos in South Pasadena.

In fact, several of the statements in your June 2, 2017 form letter are factually incorrect, and therefore offer no support for your assertion of Latino polarized voting in South Pasadena. Contrary to your assertion that there is a "complete absence of Latinos



to be elected to the City Council in recent history," Councilmember Diana Mahmud, who just completed her 2016 term as Mayor of South Pasadena, is Latina, and in fact, identified as such in her written candidate profile when she was elected in 2013. South Pasadena is a very inclusive and racially diverse community where the values of the City are to support and safeguard the civil rights, safety and dignity of all residents, regardless of their membership in a protected class, or their economic or social status, as reflected in Resolution No. 7491, adopted in December 2016. (Copy attached).

Your letter also failed to recognize that candidate David Sifuentes, who is also of Latino descent, was elected in 2007, and served on the Council until 2011. Further, you offer absolutely no evidence to support your assertion of any Latino racially polarized voting regarding Art Salinas in 2011. In fact, regression analysis methodology which looks at the racial makeup of who actually voted for Mr. Salinas by precinct reveals no racially polarized voting whatsoever. The record in South Pasadena will demonstrate that in the past 10 years, no Latino polarized voting has occurred and that two out of three Latino candidates have, in fact, been elected to City Council.

Regardless of the whether the CVRA recognizes the *Gingles* test<sup>1</sup>, attempting to force a district-based electoral system, where the result will actually be the dilution of the minority vote you purport to protect, would be completely inconsistent with the stated mission of your client, e.g., "to empower Latinos and other minorities by increasing their participation in the American democratic process."<sup>2</sup> Based on the facts and the relatively even spread of Latino voters throughout the various precincts, attempting to create five districts in the City of South Pasadena would almost certainly dilute the Latino voters' existing ability and success under the at-large system of voting to elect candidates of Latino race. This is because there is no district that could be drawn to encompass anywhere close to a plurality, let alone a sufficient majority, of Latino voters to ensure the likelihood of even a single election of a Latino candidate once every four years. Your client's motto, "Su Voto Es Su Voz" would not be served by any further attempts to dilute the vote and voice of Latino residents in South Pasadena by attempting to coerce a change to a district-based electoral system.

---

<sup>1</sup> *Thornburg v. Gingles* 478 US 30 (1986)

<sup>2</sup> See Southwest Voter Registration Education Project website at: [svrep.org/about\\_svrep.php](http://svrep.org/about_svrep.php)

July 19, 2017

Page 3

We respectfully suggest that you take a second look at the evidence and your conclusions before we can discuss further whether the City should consider a change to a district-based electoral system. After you have done so, please advise us in writing of what facts you have discovered which would support any assertion that a district-based electoral system would actually benefit the South Pasadena Latino electorate by enhancing their voting power and the City will consider doing so.

Very truly yours,

Teresa L. Highsmith, Esq.

TLH:th

## **ATTACHMENT 2**

**Los Angeles Time Article  
regarding Palmdale dated May 6, 2015**

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# Palmdale officials settle lawsuit, agree to voting by district



By JEAN MERL

MAY 06, 2015 | 10:46 PM



The city of Palmdale, shown in foreground, is poised to settle a lawsuit over its system of electing City Council members. (Anne Cusack / Los Angeles Times)



Palmdale officials Wednesday night announced that they have agreed to major changes in their elections system, settling a widely watched lawsuit over minority representation and the California Voting Rights Act.

Until now, Palmdale was a lone holdout in a string of lawsuits filed against cities that resisted district voting, which backers say helps minority groups gain elected office.

The city agreed to align its balloting to coincide with state and federal general elections, starting in November 2016. It also agreed to have voters choose elected officials by four geographic districts, including two with Latino majorities, rather than from the city as a whole.

Palmdale also will pay \$4.5 million plus interest to lawyers for the three minority plaintiffs who argued that the city's at-large voting system deprived them of opportunities to elect representatives of their choice.

The current City Council members will continue to serve until the next election, when the balloting for mayor — elected at large every two years — also will be held. Council terms can be staggered after that, according to the agreement.

The settlement represents the end of a three-year court battle and a major victory for voting rights activists.

Most cities, school districts and other jurisdictions targeted under the state's voting rights law have switched rather than wage costly court battles. Santa Barbara and Whittier are among the most recent cities to agree to change from at-large to by-district elections.

Jurisdictions vulnerable to lawsuits under the act generally have significant minority populations but few or no minority elected officials. In Palmdale, minorities make up almost 75% of the population, but candidates of color rarely have won a seat on the City Council.

Advocates of district elections say they are one remedy to the vote dilution that is characteristic of at-large elections and that minorities have a better chance of winning elections from districts made up of a large proportion of their peers. They

also say minorities have a better chance of winning when turnout is highest, so they have pushed for local governments to hold their contests to coincide with federal and state elections, held in November of even-numbered years.

Palmdale voters Juan Jaurequi, Jesse Smith and Nigel Holly sued the city under the state's voting rights law in 2012. City officials resisted settling, saying that their residents had voted for at-large elections and asserting that the city had a right to determine how it wanted to conduct its own balloting.

The following year, Los Angeles County Superior Court Judge Mark V. Mooney ruled the city's system of electing council members was illegal and ordered officials to come up with a new system of district elections.

The city lost a series of appeals, held an election that plaintiffs argued was illegal and was awaiting a hearing before a California appellate court, which also is to be resolved in the settlement agreement announced Wednesday.

Kevin I. Shenkman, an attorney for the plaintiffs, said he was "very pleased with the result."

"Not only will Palmdale have fair and inclusive elections, but other cities will look to Palmdale as an example of what happens if they refuse to comply with the California Voting Rights Act," Shenkman said.

Palmdale's elected officials continued to blast the lawsuit even as they approved the settlement.

Councilman Fred Thompson, an African American, said his 2013 election proved the lawsuit was "both unnecessary and disingenuous."

Mayor Pro Tem Mike Dispensa called on the state Legislature to make changes in the voting rights law.

"This lawsuit has never been about race or voting rights," Mayor Jim Ledford said, adding it "always has been about money and politics." Ledford produced a list of 25 voting rights cases across California that he said have cost taxpayers more than \$13.8 million.

But R. Rex Parris, another plaintiffs' attorney and mayor of neighboring Lancaster, said Palmdale officials had no one but themselves to blame for the costly legal battle.

"While we were never in doubt about our legal position, I am deeply disappointed that Palmdale City Council spent millions of ... precious tax dollars fighting to keep a system that violated the law of California and amounted to electoral discrimination," Parris said.

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### Jean Merl



Jean Merl, a hopeless news junkie, covered regional politics for the Los Angeles Times. She was raised in southern Ohio but moved with her family to Los Angeles at a tender age, which practically makes her a California native. She holds a master's degree from UCLA and remembers when Otis Chandler was publisher of The Times and Tom Bradley was mayor of L.A. She left The Times in 2015.

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## **ATTACHMENT 3**

**December 18, 2013 Staff Report**

# STAFF REPORT

City of Monterey Park

---

DATE: December 15, 2013

TO: Honorable Mayor and Members of the City Council

FROM: Mark D. Hensley, City Attorney  
Karl H. Berger, Assistant City Attorney

SUBJECT: District Voting

## BACKGROUND:

Earlier this year, the City Council asked that the City Attorney's office research the question of how the City might implement district voting to elect persons to the City Council. The City currently utilizes "at large" voting to elect City Councilmembers.

## DISCUSSION:

The "default" method for electing city councilmembers in general law cities is known as "at large" voting. This means that all registered voters within the City's jurisdiction may vote for city council candidates regardless of where within the City the voter resides (or where the city council candidate resides).

A general law city may change this default methodology with voter approval. Government Code §§ 34870, *et seq.* provide the means by which a general law city may change its voting practices. The question posed by the City Council earlier this year concerned "district" voting.

Cities may generally chose to establish five, seven or nine districts within their jurisdictions.<sup>1</sup> The ballot initiative creating district voting must identify the district boundary lines and assign numbers to each district.

There are two kinds of district voting that are available for general law cities in California: persons may be elected either "by district" or "from districts." Elections "by district" means that a person may only be elected by voters from the district in which the candidate resides.

This is different from when candidates "from" a district are elected. In this type of voting, a candidate must reside in a particular district, but voters from the city's entire jurisdiction may vote for that candidate.

---

<sup>1</sup> When a city opts to have a mayor elected by voters (rather than by the city council), then a city may opt for four, six or eight districts.

Several practical and legal complications can arise from determining whether to move forward with district voting. First, a city must identify the districts and their boundaries. Courts have actively intervened in the drawing of district boundaries on a federal and state level to ensure that there is substantial equality among all voters. Generally, this means that every district must have the same population; race cannot be the predominant factor in creating districts, but may be one consideration in addition to other neutral principles such as compactness, contiguity, and respect for communities with shared interests. If established, districts must be reexamined and potentially adjusted after each census in a process known as reapportionment. This helps preserve substantial equality amongst the voters.

Second, the practical means by which a city may transition from at large voting to district voting is not clearly set forth in California law. Government Code § 34878 provides that (unless the ballot measure provides otherwise) if a ballot measure authorizes district voting for future elections, when the terms of incumbent city councilmembers expires, city councilmembers must then be elected from the districts approved by voters. The practical problem arising from this guidance is that Councilmembers in Monterey Park serve overlapping terms of office, i.e., unless the ballot measure provides a different means of converting to a district election, there will always be incumbent city councilmembers who were elected at large; the conversion to district elections cannot take place.

To overcome this problem, several cities<sup>2</sup> proposed ballot measures which gradually converted at large elections into district elections through attrition, i.e., as councilmembers' terms ended, elections to fill those council seats were subject to district elections. Thus, for example, if district elections were approved in 2014 by Monterey Park voters, then the three council seats up for election in 2015 would be determined by district voting; the other two council seats would be determined by district voting in 2017. Another city opted to seek voter approval for both district voting and to seat councilmembers based upon such districts at the same election.<sup>3</sup>

Finally, there are the questions of (a) how to determine the district boundaries, e.g., by hiring consultants, creating a citizen committee, or through City Council consensus?; (b) whether to place a ballot measure on a special or regular election?; and (c) how to pay for the preparation of the ballot measure and the election? These are, obviously, policy questions that would need to be determined by the City Council. This staff report simply identifies such matters as areas that should be considered.

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<sup>2</sup> The cities of Chula Vista, Modesto, Anaheim, and Madera.

<sup>3</sup> The city of Escondido.

**FISCAL IMPACT:**

It is unclear how much it would cost to create districts, draft a ballot measure, and conduct an election. The overall costs would largely be dependent upon how the City Council decided the issues identified above.

**RECOMMENDATION:**

The City Council should (a) determine whether it would like to move forward with drafting the documents needed for voters to consider district voting; (b) if so, determine what method the City should utilize to create districts, i.e., hire a consultant or complete it "in house"; (c) determine what kind of district voting would be appropriate, i.e., should the ballot measure be "by district" or "from district"; (d) determine how many districts should be created; (e) determine how the ballot measure would, if approved, transition "at large" voting to district voting; and (f) take such additional, related, action that may be desirable.

By: 

Karl H. Berger  
Assistant City Attorney

Attachments: Government Code §§ 34870, *et seq.*

**§ 34870. Application, CA GOVT § 34870**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34870**

**§ 34870. Application**

Currentness

This article applies only to cities.

**Credits**

(Added by Stats.1970, c. 278, p. 549, § 2.)

West's Ann. Cal. Gov. Code § 34870, CA GOVT § 34870

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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**§ 34871. Submission to electors of election ordinance;...., CA GOVT § 34871**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34871**

**§ 34871. Submission to electors of election ordinance; definitions; initiative**

Currentness

At any municipal election, or special election held for that purpose, the legislative body may submit to the registered voters an ordinance providing for the election of members of the legislative body in any of the following ways:

(a) By districts in five, seven, or nine districts.

(b) From districts in five, seven, or nine districts.

(c) By districts in four, six, or eight districts, with an elective mayor pursuant to Article 5 (commencing with Section 34900).

(d) From districts in four, six, or eight districts, with an elective mayor pursuant to Article 5 (commencing with Section 34900).

The term "by districts" as used in this article shall mean election of members of the legislative body by voters of the district alone. The term "from districts" shall mean election of members of the legislative body who are residents of the district from which they are elected by the voters of the entire city. "Geographical area making up the district" shall in the case of elections by district mean the district, and in the case of elections from districts shall mean the entire city except with respect to the residence requirements imposed by Section 34882.

That ordinance may also be qualified for the ballot by means of an initiative measure in accordance with Chapter 3 (commencing with Section 9200) of Division 9 of the Elections Code.

**Credits**

(Added by Stats.1970, c. 278, p. 549, § 2. Amended by Stats.1975, c. 652, p. 1412, § 1; Stats.1976, c. 223, p. 421, § 1; Stats.1978, c. 745, p. 2340, § 1; Stats.1994, c. 923 (S.B.1546), § 68.)

West's Ann. Cal. Gov. Code § 34871, CA GOVT § 34871

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**§ 34872. Requisites of ordinance, CA GOVT § 34872**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34872

### § 34872. Requisites of ordinance

### Currentness

The ordinance shall state the number of legislative districts, describe the boundaries of each, number them, and state whether members of the legislative body shall be elected by districts or from districts, or by or from districts except for an elective mayor.

## Credits

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1412, § 2; Stats.1976, c. 223, p. 421, § 2.)

West's Ann. Cal. Gov. Code § 34872, CA GOVT § 34872

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**§ 34873. Amendment or repeal of ordinance, CA GOVT § 34873**

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Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34873

**§ 34873. Amendment or repeal of ordinance**

**Effective: January 1, 2011**

### Currentness

An ordinance enacted pursuant to this article may be amended or repealed in the same manner; provided, the term of office of any council member elected shall not be affected.

## Credits

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2010, c. 38 (A.B.1668), § 3; Stats.2010, c. 699 (S.B.894), § 7.)

West's Ann. Cal. Gov. Code § 34873, CA GOVT § 34873

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**§ 34874. Amendatory ordinance; submission to planning..., CA GOVT § 34874**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34874**

**§ 34874. Amendatory ordinance; submission to planning commission or legislative body**

Currentness

No amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1978, c. 745, p. 2340, § 2.)

West's Ann. Cal. Gov. Code § 34874, CA GOVT § 34874

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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**§ 34875. Amendatory ordinance; submission to voters, CA GOVT § 34875**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34875

**§ 34875. Amendatory ordinance; submission to voters**

**Effective: January 1, 2011**

Currentness

The amendatory ordinance shall not be submitted to the voters if (a) one or more of the legislative districts do not close, (b) one or more entire legislative districts are eliminated prior to the termination of the term of office of the council member of or from the district, (c) the effect is that a greater number of council members will be qualified to hold office concurrently than are authorized by this article or the amendatory ordinance.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2010, c. 38 (A.B.1668), § 4; Stats.2010, c. 699 (S.B.894), § 8.)

Notes of Decisions (2)

West's Ann. Cal. Gov. Code § 34875, CA GOVT § 34875

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**§ 34876. Findings of planning commission or legislative body, CA GOVT § 34876**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34876**

**§ 34876. Findings of planning commission or legislative body**

Currentness

The planning commission of the city or, in absence of such body, the legislative body of the city shall make findings as to the matters set forth in Section 34875 by resolution within 90 days after submission of the amendatory ordinance to the city clerk. Failure to make findings shall be constituted as a finding of compliance with Section 34875.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2.)

West's Ann. Cal. Gov. Code § 34876, CA GOVT § 34876

Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)

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**§ 34877. Form of ballots, CA GOVT § 34877**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

West's Ann.Cal.Gov.Code § 34877

**§ 34877. Form of ballots**

Currentness

The proposition of establishing or altering legislative districts shall be printed on the ballots substantially as follows:

"Shall members of the legislative body of the City of \_\_\_\_\_ be elected by (or from) districts described in Ordinance No. \_\_\_\_\_?"

or, if applicable:

"Shall members of the legislative body of the City of \_\_\_\_\_ be elected by (or from) districts described in Ordinance No. \_\_\_\_\_, and the Mayor of the City of \_\_\_\_\_ be elected on a citywide basis by the voters of the entire city?"

followed by the words "Yes" and "No," so printed that the voters may express their choice.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1413, § 3.)

West's Ann. Cal. Gov. Code § 34877, CA GOVT § 34877

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**§ 34878. Effect of favorable vote on ordinance, CA GOVT § 34878**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34878**

**§ 34878. Effect of favorable vote on ordinance**

Currentness

If a majority of the registered voters of the city, who vote, vote in favor of the ordinance, at the expiration of the terms of office of the members of the legislative body, or as provided by ordinance, members of the legislative body shall be elected by (or from) the districts described, or by or from districts with an elective mayor, and in the manner provided.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.1975, c. 652, p. 1413, § 4; Stats.1978, c. 745, p. 2340, § 3.)

Notes of Decisions (1)

West's Ann. Cal. Gov. Code § 34878, CA GOVT § 34878

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**§ 34879. Term of office, CA GOVT § 34879**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34879**

**§ 34879. Term of office**

Currentness

The term of office of members of the legislative body elected pursuant to the provisions of this article shall be four years, unless otherwise expressly provided.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2.)

West's Ann. Cal. Gov. Code § 34879, CA GOVT § 34879

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**§ 34880. Inclusion of election provisions in petition for..., CA GOVT § 34880**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34880**

**§ 34880. Inclusion of election provisions in petition for incorporation; term of office**

**Effective: January 1, 2001**

Currentness

(a) If the petition or proposal developed by the commission for submission to the electorate for incorporation or special reorganization of a city provides for the election of members of the legislative body by (or from) districts and includes substantially the provisions required to be included in an ordinance providing for that election, including Section 34871, the members of the legislative body shall be elected in the manner provided in the petition or proposal.

(b) The members of the legislative body shall hold office until the next general municipal election. At the next general municipal election the members elected by or from the even-numbered districts shall hold office for four years and the members elected by or from the odd-numbered districts shall hold office for two years. Thereafter the term of office is four years.

**Credits**

(Added by Stats.1970, c. 278, p. 550, § 2. Amended by Stats.2000, c. 761 (A.B.2838), § 3.)

West's Ann. Cal. Gov. Code § 34880, CA GOVT § 34880

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**§ 34881. Election of one member from each district and of..., CA GOVT § 34881**

West's Annotated California Codes

Government Code (Refs & Annos)

Title 4. Government of Cities (Refs & Annos)

Division 2. Organization and Boundaries (Refs & Annos)

Part 1. Organization (Refs & Annos)

Chapter 4. Alternative Forms of Government (Refs & Annos)

Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34881**

**§ 34881. Election of one member from each district and of mayor on citywide basis; effect on city officers**

Currentness

One member of the legislative body shall be elected by or from each district, or, if applicable, one member of the legislative body shall be elected by or from each district constituting a geographical division of the city, and the mayor shall be elected on a citywide basis. With the possible exception as to the number of members of the legislative body, the officers of the city remain the same.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1975, c. 652, p. 1413, § 5.)

West's Ann. Cal. Gov. Code § 34881, CA GOVT § 34881

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**§ 34882. Eligibility for office, CA GOVT § 34882**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34882**

**§ 34882. Eligibility for office**

Currentness

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1975, c. 1030, p. 2432, § 2, eff. Sept. 24, 1975; Stats.1994, c. 923 (S.B.1546), § 69.)

Notes of Decisions (2)

West's Ann. Cal. Gov. Code § 34882, CA GOVT § 34882

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**§ 34883. Voters' qualifications; nominating petitions; residency, CA GOVT § 34883**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34883**

**§ 34883. Voters' qualifications; nominating petitions; residency**

Currentness

Registered voters signing nomination petitions or voting for a member of the legislative body shall be residents of the geographical area making up the district from which the member is to be elected.

**Credits**

(Added by Stats.1970, c. 278, p. 551, § 2. Amended by Stats.1978, c. 745, p. 2341, § 4.)

West's Ann. Cal. Gov. Code § 34883, CA GOVT § 34883

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**§ 34884. Election by district; establishment of districts; terms of office, CA GOVT § 34884**

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 4. Government of Cities (Refs & Annos)  
Division 2. Organization and Boundaries (Refs & Annos)  
Part 1. Organization (Refs & Annos)  
Chapter 4. Alternative Forms of Government (Refs & Annos)  
Article 2. Election of Legislative Body by or from Districts in Cities (Refs & Annos)

**West's Ann.Cal.Gov.Code § 34884**

**§ 34884. Election by district; establishment of districts; terms of office**

Currentness

If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 35258<sup>1</sup>, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, the following procedure shall apply:

(a) Prior to the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the councilmanic districts. The districts shall be as nearly equal in population as may be. In establishing the boundaries of the districts, the legislative body may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interests of the districts;

(b) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years; and

(c) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be elected by district in the odd-numbered districts and shall hold office for four years.

The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters at any future election of a measure in accordance with the provisions of Section 34871.

**Credits**

(Added by Stats.1978, c. 745, p. 2341, § 4.5.)

**Footnotes**

<sup>1</sup>

Repealed.

§ 34884

**§ 34884. Election by district; establishment of districts; terms of office, CA GOVT § 34884**

West's Ann. Cal. Gov. Code § 34884, CA GOVT § 34884

**Current with all 2013 Reg.Sess. laws, all 2013-2014 1st Ex.Sess. laws, and Res. c. 123 (S.C.A.3)**

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## **ATTACHMENT 4**

### **U.S. Census Data for Monterey Park**


[MAIN](#)
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[ADVANCED SEARCH](#)
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**Community Facts - Find popular facts (population, income, etc.) and frequently requested data about your community.**

Enter a state, county, city, town, or zip code:

GO

Population

Age

Business and Industry

Education

Governments

Housing

Income

Origins and Language

Poverty

Race and Hispanic Origin

Veterans

Show All

**Monterey Park city, California**
[Bookmark/Save](#)
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Description	Measure	Source
Population		
Census 2010 Total Population	60,269	2010 Demographic Profile
2017 Population Estimate (as of July 1, 2017)	N/A	2017 Population Estimates
2016 ACS 5-Year Population Estimate	61,001	2012-2016 American Community Survey 5-Year Estimates
Median Age	43.8	2012-2016 American Community Survey 5-Year Estimates
Number of Companies	9,511	2012 Survey of Business Owners
Educational Attainment: Percent high school graduate or higher	78.9%	2012-2016 American Community Survey 5-Year Estimates
Count of Governments	N/A	2012 Census of Governments
Total housing units	21,031	2012-2016 American Community Survey 5-Year Estimates
Median Household Income	54,008	2012-2016 American Community Survey 5-Year Estimates
Foreign Born Population	32,864	2012-2016 American Community Survey 5-Year Estimates
Individuals below poverty level	16.6%	2012-2016 American Community Survey 5-Year Estimates
Race and Hispanic Origin		
White alone	9,285	2012-2016 American Community Survey 5-Year Estimates
Black or African American alone	255	2012-2016 American Community Survey 5-Year Estimates
American Indian and Alaska Native alone	396	2012-2016 American Community Survey 5-Year Estimates
Asian alone	39,755	2012-2016 American Community Survey 5-Year Estimates
Native Hawaiian and Other Pacific Islander alone	286	2012-2016 American Community Survey 5-Year Estimates
Some Other Race alone	9,524	2012-2016 American Community Survey 5-Year Estimates
Two or More Races	1,500	2012-2016 American Community Survey 5-Year Estimates
Hispanic or Latino (of any race)	17,317	2012-2016 American Community Survey 5-Year Estimates
White alone, Not Hispanic or Latino	2,439	2012-2016 American Community Survey 5-Year Estimates
Veterans	1,712	2012-2016 American Community Survey 5-Year Estimates

• Want more? Need help? Use Guided Search or visit [Census.gov's Quick Facts](#).



## **ATTACHMENT 5**

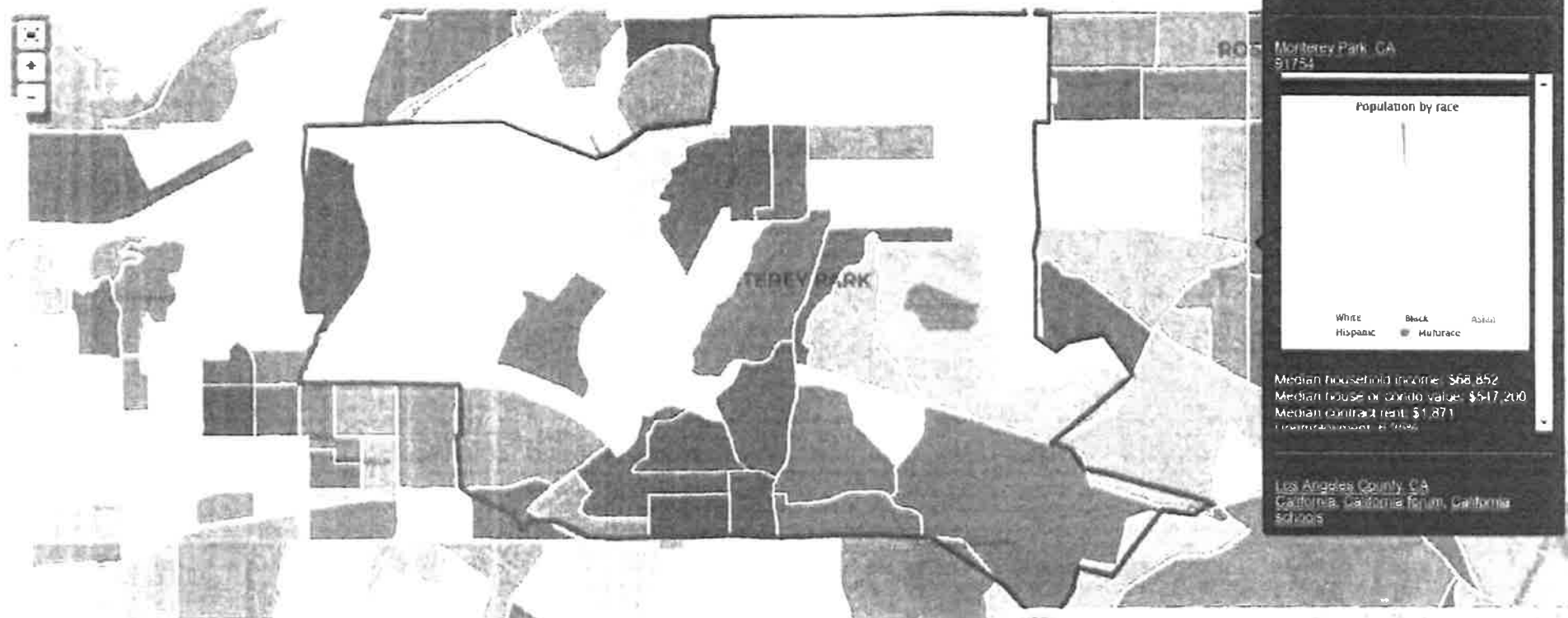
### **Examples of Resident Groupings**



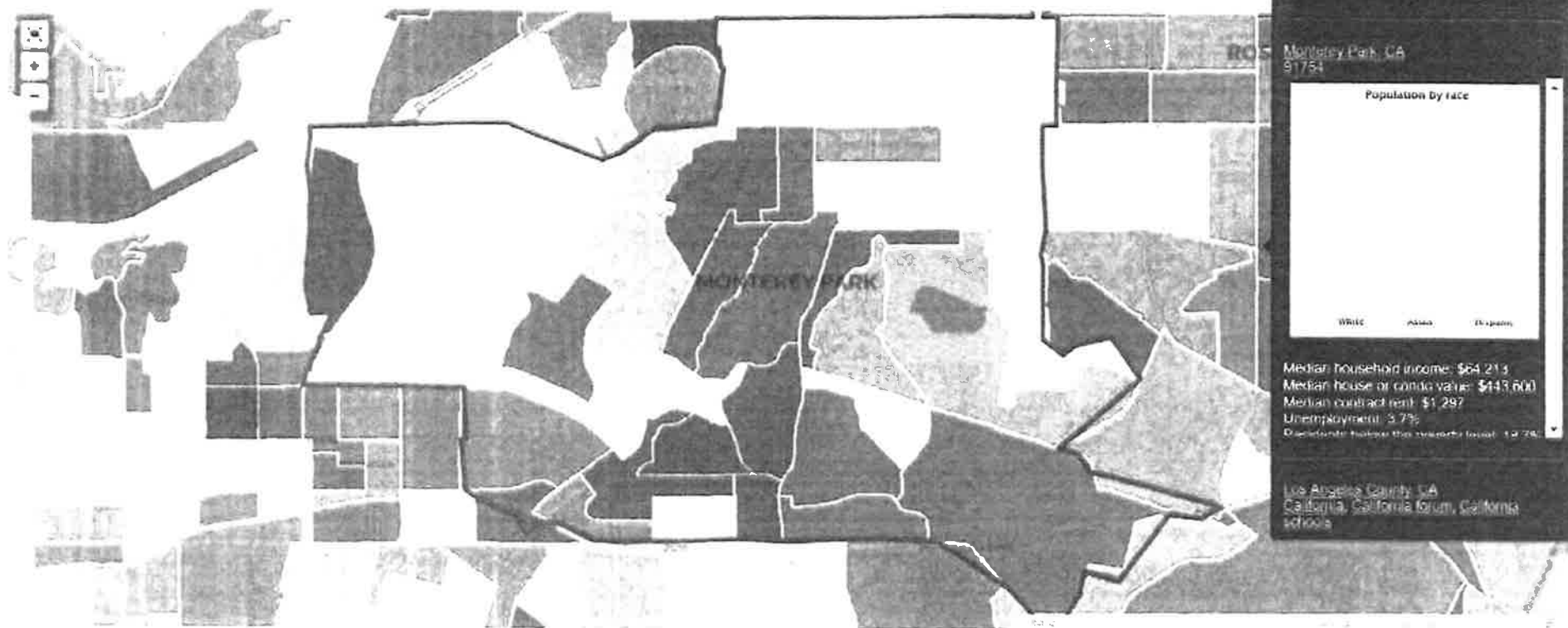
Map: Racial diversity



Q612: Racial diversity



Data: Racial diversity



**ATTACHMENT 2**  
**Proposed Resolution**

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION ADOPTED PURSUANT TO ELECTIONS CODE § 10010(E)(3)(A) STATING THE CITY COUNCIL'S INTENT TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING DISTRICT BASED ELECTIONS FOR CITY COUNCIL MEMBERS.**

The City Council of the City of Monterey Park does resolve as follows:

**SECTION 1:** The City Council finds and declares as follows:

- A. The City Council first considered whether changing the City's election process for councilmembers was in the public interest in 2013;
- B. In March 2018, the City Council authorized the City Manager to retain a consultant to provide information regarding potential district elections;
- C. The City contracted with National Demographics Corporation ("Consultant") on July 6, 2018. On October 5, 2018, the City Council placed this matter on the October 17, 2018 regular agenda for consideration;
- D. The City has not received a notice from a perspective plaintiff(s) as contemplated by Elections Code § 10010(E)(1). Rather, the City Council is undertaking this process voluntarily in an abundance of caution and to avoid any potential allegation that the City is violating the California Voting Rights Act of 2001 ("CVRA");
- E. The City Council asserts that any such potential allegation would be contradicted by the election records and the current composition of the City Council. The broad language of the CVRA, however, makes it difficult for the City to defend against any potential challenge. Based upon the experience of other public entities, it is apparent that a significant amount of public monies would be unnecessary expended in any such defense;
- F. Accordingly, it is in the public interest for the City Council to adopt this Resolution and commence the process for transitioning to district-based elections;
- G. In adopting this Resolution, the City Council declares its intent to transition from an at-large system to a district-based elections system in accordance with Government Code § 34886 and Elections Code §10010;
- H. The City will begin work with the Consultant to assist the City in establishing district maps for the public's consideration;
- I. Before drawing draft maps of the proposed boundaries of election districts,

the City will hold at least two public hearings over not more than 30 days, at which time the public is invited to provide input regarding the composition of the districts;

- J. The City will then publish and make available for release at least one draft map of the newly proposed electoral districts, including the potential sequence of elections shown;
- K. Once the draft map is publicized for at least seven days, the City will hold at least two additional public hearings over a period of not more than 45 days at which time the public is invited to provide input regarding the content of the draft map and the proposed sequence of elections before the public hearing at which the City Council considers a map; and
- L. If a draft map is revised at or following a public hearing, the revised map will be published and made available to the public at least seven days before the City Council considers it; and
- M. In determining the final sequence of staggered district elections, the City Council will give special consideration to the purposes of the CVRA, and will take in to account the preferences expressed by the members of the districts.

SECTION 2: *Environmental Assessment.* This Resolution is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*, "CEQA Guidelines") in that it is not a "project" for purposes of CEQA (as defined by CEQA Guidelines § 15378). Specifically, this Resolution proposes an organizational or administrative activity that will not result in a direct or indirect physical change in the environment (CEQA Guidelines § 15378(b)(5)). Further, even if this Resolution was deemed a "project," and therefore subject to CEQA, the Resolution would be exempt as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 3: *Declaration of Intent.* Based upon the foregoing, the City Council declares its intent pursuant to Elections Code § 10010 to adopt a district-based election system for use in the City's General Municipal Election for City Council Members. The exact nature of that district-based system will be determined during the public hearing process. Additionally, the manner by which such system will be adopted, i.e., by ordinance or ballot proposition, will likewise be determined through the public hearing process.

SECTION 4: *Public Hearings; Schedule.* The City Council resolves to hold at least five public hearings and publish at least one draft map and staggering sequence, pursuant to the proposed hearing schedule attached as Exhibit "A," and incorporated by reference. All public hearings must be noticed by posting on the City's website at least 10 calendar days in advance of the hearing and publicizing in a newspaper of general

circulation at least 10 days in advance of the hearing. If desirable, the City Manager may also publicize such hearings in other media including, without limitation, other newspapers, the City's newsletter, and appropriate social media sites.

SECTION 5: *Delegation of Authority.* The City Manager, or designee, will administer the contract with Consultant to direct and formulate one or more electoral district scenarios for review by the public and City Council at two or more public hearings, in accordance with the City's proposed timeline. Working with the Consultant, the City Manager is directed to publicize relevant maps; information; notices; agendas; and other materials regarding district elections. Further, the City Manager will establish means of communication to answer questions from the public. To accomplish these tasks in an expeditious manner, the City Manager is authorized to execute such agreements and ancillary documents, in a form approved by the City Attorney, as are necessary to implement the purpose of this Resolution.

SECTION 6: The City Clerk is directed to certify the adoption of this Resolution.

SECTION 7: This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this 17<sup>th</sup> day of October, 2018.

\_\_\_\_\_  
Peter Chan, Mayor

ATTEST:

\_\_\_\_\_  
Vincent D. Chang, City Clerk

APPROVED AS TO FORM:  
MARK D. HENSLEY, City Attorney

By: \_\_\_\_\_  
Karl H. Berger, Assistant City Attorney

**EXHIBIT A****Draft Schedule for City of Monterey Park district elections**

October 17	Adopt Resolution of Intent to transition Election Systems.
Nov. 7	1 <sup>st</sup> public hearing (“to solicit public input regarding the composition of the districts”). No draft maps drawn yet.
Nov. 21 (or alternative date for 2 <sup>nd</sup> meeting in November, given Thanksgiving is Nov. 22)	2 <sup>nd</sup> public hearing (“to solicit public input regarding the composition of the districts”). No draft maps drawn yet.
Jan. 9 (No later than 7 days prior to 3 <sup>rd</sup> hearing)	<i>No meeting.</i> Draft maps website and available at City office (and potentially other sites)
Jan. 16	3 <sup>rd</sup> public hearing (“to solicit public input regarding the content of the draft maps and the proposed sequence of elections”). Possible Council narrowing or revising draft maps.
Feb. 6	4 <sup>th</sup> public hearing (“to solicit public input regarding the content of the draft maps and the proposed sequence of elections”). Possible Council selection of a map and election sequence and direction to include the selected map and sequence in the resolution to be formally brought to the Council at the next hearing.
Possibly also on Feb. 6 (if there was clear consensus on a map Jan. 16), otherwise Feb. 20	5 <sup>th</sup> public hearing followed by Council action to (if desirable) introduce the ordinance adopting the selected map and designating which Council districts will be up for election in which years. Alternatively, determine whether to place on ballot.
Feb. 20 or March 6	If desirable, second reading and adoption of ordinance (often done on consent agenda)





28905 Wight Road  
Malibu, California 90265  
(310) 457-0970

[kshenkman@shenkmanhughes.com](mailto:kshenkman@shenkmanhughes.com)

VIA CERTIFIED MAIL

October 15, 2018

Vincent D. Chang - City Clerk  
City of Monterey Park  
320 W. Newmark Ave.  
Monterey Park, CA 91754

CITY CLERK OFFICE  
2018 OCT 18 P 3:45  
CITY OF MONTEREY PARK

Re: *Violation of California Voting Rights Act*

I write on behalf of our client, Southwest Voter Registration Education Project. The City of Monterey Park ("Monterey Park") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Monterey Park is racially polarized, resulting in minority vote dilution, and therefore Monterey Park's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 667 ("Sanchez"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control every seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) ("Gingles"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore

[minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4<sup>th</sup> 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 **is established** if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other

electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

Monterey Park’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of Monterey Park’s council elections.

The elections in 2017 and 2009 are particularly illustrative. In 2017, Randall Avila, Anthony Felix Jr. and Joe Ray Avila ran for City Council. Despite significant support from Latino voters, none were able to secure a seat on the City Council due to the bloc voting of the non-Latino majority. Randall Avila recognized the problem when he remarked that the Latino community lacks representation in Monterey Park’s city government. In 2009, Sharon Martinez and Luis Estrada ran for City Council. Despite significant support from Latino voters, neither was able to secure a seat on the City Council due to the bloc voting of the non-Latino majority.

Monterey Park has a disturbing history of official discrimination – from city council resolutions to deport undocumented immigrants, to city ordinances prohibiting signs in any language other than English. The at-large election system not only reflects official discrimination, it also perpetuates it.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale City Council, with districts that combine all incumbents into one of the four districts.

Given the lack of Latino representation on the City Council in the context of racially polarized elections, we urge Monterey Park to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than December 5, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to be 'KS' or similar initials, written over a horizontal line.

Kevin I. Shenkman

Shankman & Hughes PC  
28905 Wight Rd.  
Malibu, CA 90265



7000 1346 3152



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Vincent D. Chang  
City Clerk  
City of Monterey Park  
320 W. Newmark Ave.  
Monterey Park, CA 91754

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October 19, 2018

***VIA FIRST CLASS U.S. MAIL***

Mr. Kevin I. Shenkman  
Shenkman & Hughes  
28905 Wight Road  
Malibu, California 90265

Re: Letter dated October 15, 2018

Dear Mr. Shenkman:

Our office serves the City of Monterey Park as City Attorney. The City Clerk forwarded your letter dated October 15, 2018 (postmarked October 16, 2018 and received on October 18, 2018) to our attention. Thank you for your correspondence.

Please be aware that the City Council already undertook action to begin the process of transitioning from an at-large election system to a district-based election system months before receiving your letter. Most recently, at its meeting on October 3, 2018, the City Council announced that an item would be placed on the October 17, 2018 regular meeting agenda for consideration.

As you can read from the City's website ([www.montereypark.ca.gov](http://www.montereypark.ca.gov)), Agenda Item 6-B addresses the by-district election matter (the Agenda was posted on Friday, October 12, 2018). If you review the video from that meeting (*see* [www.montereypark.ca.gov/133/City-Council-Meeting-Videos](http://www.montereypark.ca.gov/133/City-Council-Meeting-Videos), starting at 3:43), the matter was continued to the November 7, 2018 regular meeting to ensure that all five Councilmembers would be present to discuss the matter.

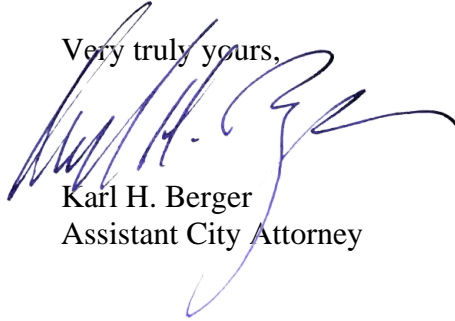
Should you read Agenda Item 6-B, you will see that the City has considered this matter since at least 2013; earlier in 2018, the City retained a mapping consultant to assist with the transition. In

District Elections – Response  
October 19, 2018  
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sum, the City is already underway with the public process. Since the City's next municipal election is not scheduled until March 2020, there is ample time for public input.

You are, of course, encouraged to participate in the public process and discussion regarding the matter. The City Council meets on the first and third Wednesdays of each month. I am sure the Council would welcome your input regarding this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Karl H. Berger', with a stylized flourish extending from the end.

Karl H. Berger  
Assistant City Attorney

c (via email): Vincent D. Chang, City Clerk  
Ron Bow, City Manager  
Mark D. Hensley, City Attorney